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ADOPTED
BOARD OF COMMISSIONERS
HOUSING AUTHORITY

4-H APRIL 13, 2010

Sachi A. Hamai
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EXECUTIVE OFFICER

April 13, 2010

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

APPROVE THE REVISED DEBT COLLECTION POLICY OF THE COMMUNITY DEVELOPMENT COMMISSION AND HOUSING AUTHORITY
(ALL DISTRICTS)

SUBJECT

The Debt Collection Policy of the Community Development Commission and the Housing Authority of the County of Los Angeles was first adopted in July 2000. It has been revised to incorporate minor changes in programs and services, and to delegate specific authority to the Executive Director to use litigation as part of the debt collection process, as well as to provide delegated authority to the Executive Director to reduce or write-off delinquent amounts deemed uncollectible. This letter recommends approval of the revised Debt Collection Policy, and it relates to a similar item on the agenda of the Board of Commissioners of the Community Development Commission.

IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE GOVERNING BODY OF THE HOUSING AUTHORITY

1. Find that approval of the attached Debt Collection Policy is not subject to the provisions of the California Environmental Quality Act (CEQA) because the action will not have the potential for causing a significant effect on the environment.

2. Approve and authorize the Executive Director to implement the revised Debt Collection Policy, which also authorizes the Executive Director to initiate litigation for purposes of debt collection, and to reduce or write-off delinquent accounts deemed uncollectible, up to an amount equal to the full amount of the debt, when the individual debt does not exceed $100,000.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to implement the revised Debt Collection Policy which incorporates minor changes to programs and services. The Policy also delegates specific authority to the Executive Director to use litigation as part of the debt collection process and to reduce or write-off delinquent accounts deemed uncollectible, up to an amount equal to the full amount of the debt, when the individual debt does not exceed $100,000.

FISCAL IMPACT/FINANCING

This policy will have no impact on the County general fund. To collect certain debts owed, the Commission and the Housing Authority currently use the services of an outside collection agency, selected through a Request for Proposal process. The collection agency receives a negotiated percentage of the collected funds as payment for its services, and no additional funds are budgeted for this purpose. The proposed debt collection policy establishes the County of Los Angeles' Treasurer and Tax Collector (TTC) as the collection agent for the Commission and Housing Authority. Under a memorandum of understanding the TTC will receive a negotiated percentage of the collected funds as payment for its services. Should litigation become necessary, funds contained in the respective Commission or Housing Authority approved budgets will be used for legal fees and associated costs.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Debt Collection Policy was first implemented in 2000 to formalize the necessary authority and guidelines carried out by the agency’s divisions and units for the collection of seriously delinquent receivable accounts. In addition to the agency wide policy, each operating division is responsible for developing specific collection criteria and internal procedures for programs under its control that require debt collection; criteria and procedures will be consistent with the agency Debt Collection Policy. Guidelines for handling defaults or breaches of contract on loans as a result of programmatic issues, such as loan compliance or administrative matters, are also addressed in the respective division's internal procedures.

The revised Debt Collection Policy incorporates minor changes to programs and services that have occurred since initial approval of the policy. It also specifically authorizes the Executive Director to proceed with litigation when necessary, following consultation with County Counsel. Lastly, the revised policy will set a limit of $100,000 for the Executive Director when approving to write off a delinquent loan or to reduce the amount of liability of the delinquent loan. The write-off limit is consistent with federal regulations (24 CFR section 17.60) and Chapter 7 of Department of Housing and Development (HUD) Guidebook 4310.5 Rev 2, Section V, that if a single debt does not exceed $100,000 exclusive of interest, the agency can terminate the collection effort where it appears that the cost of collection will likely exceed the amount of recovery.

It is the policy of the Commission and the Housing Authority to carefully weigh cost benefit considerations before proceeding with debt collection and write-off. In some instances, such as where the amount owed to the Commission is substantial and the debtor has the financial means to make the payment but has failed to do so, litigation may provide more effective leverage than referral to a collection agency.

In addition, certain loss recovery approaches, such as the State Franchise Tax Board Intervention

Program to impound a taxpayer's tax refund, wage garnishment, etc., all requires the prerequisite of a judicial judgment through legal proceeding. The authority to litigate certain cases will strengthen the ability to collect funds due the Commission and Housing Authority.

The Commission and TTC have executed a memorandum of understanding to establish the TTC as the collection agent for the Commission. Debts deemed uncollectible will be returned to the Commission for further legal actions or write-off.

Finally, setting a limit on the amount that the Executive Director can approve for a single write-off will establish a better oversight in managing delinquent debts. According to Chapter 7 of the HUD Guidebook 4310.5 Rev 2, Section V, in order for a debt to be recommended for write-off, one or more of the following criteria is met: a) the debt is legally without merit; b) the debt cannot be substantiated; c) the costs of further collection action will exceed the amount recoverable; d) the debtor cannot be located; or e) no substantial amount can be collected.

On October 28, 2009, the Housing Commission recommended approval of the revised Debt Collection Policy.

ENVIRONMENTAL DOCUMENTATION

This action is exempt from the provisions of the National Environmental Policy Act pursuant to 24 Code of Federal Regulations, Part 58, Section 58.34 (a)(3), because it involves administrative activities that will not have a physical impact on or result in any physical changes to the environment. The activity is not subject to the provisions of CEQA pursuant to State CEQA Guidelines, Section 15060(c)(3) and 15378 because it is not defined as a project under CEQA and does not have the potential for causing a significant effect on the environment.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The revised Debt Collection Policy will afford the Commission and the Housing Authority greater authority to pursue effective actions to reduce the delinquency of program receivables and improve the collection of outstanding debts.

Respectfully submitted,

SEAN ROGAN
Executive Director

SR:mm

Enclosures

DEBT COLLECTION POLICY

PURPOSE

The mission of the Community Development Commission of the County of Los Angeles and the Housing Authority of the County of Los Angeles (collectively referred to as the “Commission”) is to generate and effectively use resources to provide housing and community development services for the County of Los Angeles.

This policy includes procedures to reduce delinquent receivables and improve outstanding debt collection associated with the Commission’s various programs. “Receivables” and “debt” are funds or other valuable consideration owed to the Commission from program loans, contracts, Memoranda of Understanding, leases, purchase orders, invoices, statutes, regulations, ordinances, court orders or equity.

Delinquent receivables handled internally by the Financial Management Division are described in the section entitled *Other Debt Collection Actions*.

POLICY

The Commission’s main approach to debt resolution is to seek long-term solutions or “work outs” including payment deferrals, debt reduction, or debt forgiveness, when these actions are reasonable and consistent with program objectives. Some debt collection choices used by commercial lenders are not appropriate for Commission use and are not part of this policy.

The Executive Director has the authority, in consultation with the Commission’s Risk Management Unit and County Counsel, to refer delinquent accounts to outside collection, begin litigation (including but not limited to small claims court proceedings, foreclosure actions, unlawful detainer actions, breach of contract actions, etc.), conduct evictions, write-off non-performing debt or take other actions to resolve delinquent debt and remedy monetary and non-monetary defaults. The Executive Director is authorized to write-off or reduce delinquent accounts deemed uncollectible, up to an amount equal to the full amount of the debt, when the individual debt does not exceed $100,000.

All debt collection actions must be consistent with cost-benefit considerations, funding source requirements and the mission of the Commission, as stated above.

DEBT COLLECTION PROCESS

The Commission manages programs which at times require debt collection. Each Division is responsible for developing operating procedures and collection criteria for programs under its management, including ways of handling loan defaults or breaches of contract resulting from program issues, such as loan compliance or administrative matters.

Each division is required to ensure that its own written internal procedures support the Commission's policy of reducing the delinquency of all receivables and improving the collection of outstanding debts. Both new and revised internal procedures must approved by the Executive Director or his designee and copies maintained within each Commission and Housing Authority division.

After collection efforts on delinquent accounts have been exhausted, the Division may refer accounts to a collection agency designated by the Financial Management Division. Collection agency referrals are authorized by the appropriate Division Director and monitored by the Financial Management Division.

A primary consideration in debt collection is whether it is economically favorable to refer accounts to a collection agency. Reasonable efforts are made to maximize economic benefits from available debt collection choices. Receivables referred for collection must comply with the *Agreement for Delinquent Account Collection Services* executed with the collection agency, copies of which are provided to the Divisions by the Financial Management Division.

Described below are programs which may need debt collection, the types of debt that may be created by these programs and the general collection procedures followed by each program to reduce debt.

Debt Collection by Program

Program: Business/Commercial Loans

Responsible Division: Economic Redevelopment

Debt Type: Delinquent Loan

Business loans originate under several grant-funded loan programs. Delinquent loan accounts are managed according to procedures approved by the various granting agencies. Loan oversight is provided by the Loan Administration Board appointed by the Commission's Executive Director. Delinquent loans are referred to collection after written approval has been given by the appropriate Loan Administration Board.

The specific small business loan programs which may result in debt collection are listed below:

1. County Business Loan Program

2. Expansion Program

3. County Technology Loan Program

4. Float Loan Program

5. County Utility Loan Program

These programs are subject to referral to a collection agency, except the Float Loan Program because these loans are fully collateralized with an Irrevocable Demand Letter of Credit.

<u>Program</u>:	Property Rehabilitation Loans
<u>Responsible Division</u>:	Housing Development and Preservation
<u>Debt Type</u>:	Delinquent Loan

Property rehabilitation loans are made to owners of single family and mufti-family residences based on loan committee approval. The Housing and Preservation Division performs internal debt collection on delinquent loans. When internal collection efforts and other debt resolution attempts fail, the Division Director may refer the delinquent account for outside collection or, consistent with cost-benefit considerations, may recommend to the Executive Director that the account be restructured or other alternative measures stated in this policy.

The following housing preservation loans may be referred to an outside collection agency:

- Rehabilitation Loan Programs

  1. Owner-occupied Single Family Residences (1-4 units)

  2. Rental Single and Multi-Family Units

  3. Earthquake Recovery Loan Program

  4. Other Loan Program Contracts

All of these programs require repayment by the borrower, but a portion or all of each loan may be forgivable, as determined by the individual funding source and specified in the loan documents.

Program: Home Ownership Program (HOP)

Responsible Division: Housing Development and Preservation

Debt Type: Delinquent Loan

The Home Ownership Program (HOP) has been designed to meet the needs of low-income families with the necessary down payment assistance. The Housing and Preservation Division performs internal debt collection on delinquent loans. When internal collection efforts and other debt resolution attempts fail, the Division Director may refer the delinquent account for outside collection or, consistent with cost-benefit considerations, may recommend to the Executive Director that the account be restructured or other alternative measures stated in this policy.

Program: Development Loans

Responsible Division: Housing Development and Preservation

Debt Type: Delinquent Loan

Development loans are made to developers to finance projects in the Affordable Housing or Special Needs Housing programs. Loan repayments are typically conditioned on the availability of "net cash flows" derived from the collateralized property. These loans may have complex requirements for terms, conditions, etc. that are included in individual agreements approved by the Board of Commissioners and/or Board of Supervisors. Delinquent loans are typically resolved through a loan modification agreement. If the delinquency cannot be cured, foreclosure proceedings or other measures to resolve the debt may be considered.

Program: Countywide Section 108 Loan Program

Responsible Division: Community Development Block Grant (CDBG)

Debt Type: Delinquent Loan

The Countywide Section 108 Loan Program is a $30 million pre-approved pool of loan guarantee authority available to participating cities, their redevelopment agencies, and through these agencies to private developers to finance eligible activities. Loan repayments are commonly derived from future allocations of CDBG-funds to participating agencies but may also include, but not limited to general funds, tax increment, sales tax, or direct payments from for-profit developers. These loans may have complex requirements for terms, conditions, etc. included in agreements approved by Board of Commissioners and/or the Board of Supervisors. Each loan is 100% collateralized for the term of the loan. If delinquent loans cannot be cured, foreclosure proceedings to resolve the debt will begin, as mandated in each loan agreement.

Program: CDBG

Responsible Division: CDBG Division

Debt Type: Disallowed Costs from Program Monitoring

As a subgrantee, the CDBG Division is responsible for monitoring sub-recipients to ensure compliance with federal regulations. Should a sub-recipient not meet these requirements or fail to properly support the reported expenditures, costs may be disallowed and must be returned to CDBG as program income. If costs are not repaid, the CDBG Division may offset the disallowances against costs claimed by the agency to another CDBG contract. However, if an agency no longer receives CDBG funds or is unwilling to repay the disallowance, a Demand Letter is issued seeking immediate repayment. An agency that does not respond to the Demand Letter is placed on the CDBG High-Risk list and funds are not awarded to the agency in the future unless the disallowed costs are repaid in full.

Program: Conventional and Non-Conventional Rental Housing

Responsible Division: Housing Management

Debt Type: Delinquent Rent

Tenants will at times voluntarily or involuntarily vacate conventional and non-conventional rental housing units with unpaid charges on their accounts. When unpaid charges remain, collection letters are sent to the former tenants by Housing Management staff after the property has been vacated. After all internal collection efforts and other debt resolution attempts fail, the Housing Management Division Director may refer these accounts to the outside collection agency.

Program: Conventional and Non-Conventional Rental Housing

Responsible Division: Housing Management

Debt Type: Fraud

Housing Management may start an investigation of a tenant family when information about possible fraud comes from referrals, complaints or tips, internal review of income verification and other documentation, internal investigations, and/or other sources.

Conventional and non-conventional rental housing tenants and applicants may at times commit fraud, as defined under federal, state, or local law. Fraud may include, but not be limited to intentional misrepresentation of income, assets and allowances, intentional misrepresentation of family composition, initiating and/or taking part in bribes or other illegal activities. Internal debt collection efforts are made by Housing Management that may result in settlement agreements to repay rent or settlement agreements to move-out and repay rent. If a tenant defaults on a settlement agreement, Housing Management may take breach of contract actions in civil court or small claims court, depending on the amount.

The Housing Management Division Director may recommend to the Executive Director that recovery be sought through unlawful detainer, civil remedies such as small claims court or civil court (depending on the amount), government tax refund intervention programs and wage garnishment. The Housing Management Division Director may also transfer the matter to the Financial Management Division Director for referral to an outside collection agency.

The Housing Management Division Director may also recommend to the Executive Director criminal prosecution of a tenant, including referral to the Office of the Inspector General.

Program: Rent Subsidy (Section 8)

Responsible Division: Assisted Housing

Debt Type: Overpayments to Property Owners

Private property owners may occasionally receive rent overpayments for tenant participants of the Section 8 Tenant-Based Rental Assistance Program. The Assisted Housing Division is responsible for this program and may refer cases of overpayments to the Financial Management Division to refer to the outside collection agency after internal collection efforts and other debt resolution attempts fail.

Program: Rent Subsidy (Section 8)

Responsible Division: Assisted Housing

Debt Type: Tenant Unreported Income

Tenant participants may fail to report required information because of a lack of understanding or attempted fraud. This may include not disclosing assets, sources of income or changes in family composition. When overpayments occur from not reporting information and internal collection efforts fail, the Assisted Housing Division Director may refer the case to the Financial Management Division for referral to the outside collection agency.

The Assisted Housing Division Director may recommend to the Executive Director unlawful detainer actions, civil remedies such as small claims court or civil court, government tax refund intervention programs or wage garnishment. Recommendations may also be made for criminal prosecution, including referral to the Office of the Inspector General.

Foreclosures

Foreclosure actions enforce the terms of real estate loans when monetary, non-monetary or regulatory defaults occur. The Executive Director and the Commission's governing body must approve foreclosure actions.

Monetary defaults result from nonpayment of loans that require regular scheduled payments. Non-monetary and regulatory defaults result from violation of a specific loan condition, such as the failure to comply with affordability restrictions, occupancy requirements or maintenance provisions.

Most foreclosure actions result from monetary defaults and begin after all other collection efforts have failed.

A real estate loan is considered eligible for foreclosure proceedings if any of the following conditions exist:

1. A monetary default exists when full payment is not made for four consecutive months;

2. The borrower is unwilling or unable to make satisfactory arrangements to cure a delinquency;

3. The borrower is unwilling or unable to make reasonable or timely arrangements to satisfy a monetary or non-monetary violation of the loan terms; or

4. A senior lien holder has started foreclosure proceedings.

In an effort to bring the loan into good standing, collection efforts by the responsible Division will continue until the date of the foreclosure sale. A Commission representative will attend the foreclosure sale and report the results to Division management having responsibility for the property. If the Commission acquires the property, staff will notify the County Tax Assessor's Office. Foreclosed properties will be managed by the Commission until sold to the Housing Authority, a non-profit agency or a private party according to the Commission's mission of preserving affordable housing.

Write-Off Procedures

Because of the wide range of loans funded by the Commission, individual write-off procedures are necessary for each program. These procedures must be developed by the responsible Division Director and the Financial Management Division, and approved by the Executive Director. Write-off procedures must be consistent with the Agencies wide objective of first exhausting all efforts to collect the amounts owed prior to deeming a debt uncollectible. One or more of the following criteria must be met: a) the debt is legally without merit; b) the debt cannot be substantiated; c) the cost of further collection action will exceed the amount recoverable; d) the debtor cannot be located; e) no substantial amount can be collected.

Each Division must ascertain whether the write-off is allowed by the funding source. If the funding source does not allow the write-off or limits the amount of write-off, the responsible Division Director will need approval from the Executive Director to use other funding sources for the write-off. Such approval must be included in the debtor’s file before the Division authorizes an account write-off. A statement that the write-off complies with the policies of the funding source must be included in each write-off request transmitted to the Executive Director by the Division Director. Upon approval by the Executive Director, each write-off request will be forwarded to the Financial Management Division to record the write-off in the financial system.

Other Debt Collection Actions

The following two types of employee-related debt collection are handled by the Financial Management Division, and are not referred to the outside collection agency:

1. Claims involving overpayments of salary or related benefits (including worker's compensation);

2. Claims for travel overpayments which are handled with the support of the responsible Division.

QUALITY CONTROL

A written quality control plan must be established and maintained by the outside collection agency to ensure the requirements of the contract are met.

A copy must be provided to the Financial Management Division within 10 working days prior to the contract start date, and within 10 working days of any changes made to the quality control plan during the term of the contract. The quality control plan includes, but is not limited to, the following:

1. The collection agency's quality control or monitoring system covering each item listed in the Performance Requirements Summary section of the contract. The quality control plan must specify activities to be monitored on either a scheduled or unscheduled basis, the frequency of monitoring, and the title of the individuals who perform the monitoring.

2. The methods of verifying and preventing deficiencies in services before they become unacceptable and out of compliance with the contract.

3. The methods for documenting the monitoring results and, if necessary, the corrective action taken.

4. The methods for maintaining the confidentiality of debtor information while in the care of the collection agency.

REPORTING REQUIREMENTS

Certain debt collection reports and notices are issued by either the Commission or the collection agency.

Reports issued by the collection agency include collection and other account information, account transfers, payment and commission activity and complaints by borrowers.

Commission reports are issued by each Division for the loan programs which have resulted in a debt referred to the collection agency. Reports include account referral records, account adjustments, records of direct payment to the Commission, and requests to recall accounts from the collection agency. These reports must be submitted to the Financial Management Division by the established deadlines.

END OF POLICY